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IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA

JOANNE P. FRAZIER,

Plaintiff,

vs.

The COMMISSIONER OF the
SOCIAL SECURITY
ADMINISTRATION,

Defendant.

No. C-05-02355 WDB

PLAINTIFF'S MOTION
TO HAVE LATE-FILED
REPLY CONSIDERED
AND PROPOSED ORDER

(no hearing)

MOTION.

Plaintiff hereby requests that the Court consider Plaintiff's late-filed optional Reply when deciding this case. Pursuant to the scheduling order, the optional reply was to have been filed, or the record closed, within 14 days of Defendant's cross motion, or by Monday, January 9, 2006, based on Defendant's Cross Motion filed on December 22, 2005 (allowing for three service days pursuant to F.R.Civ.P. Rules 5 and 6). That optional reply date was not met due to inept scheduling of undersigned counsel.

Plaintiff's counsel has, since becoming aware of the overdue reply, prepared and e-filed it (on January 19, 2006). Plaintiff respectfully submits that counsel's error

in conforming with the schedule was accidental, the Court should not sanction or punish Plaintiff, and the Court should allow and consider the late filing.

Upon inquiry by Plaintiff's counsel, the U.S. Attorney's office advised that Defendant would not comply with Plaintiff's request that Defendant allow Plaintiff here to make a statement that Defendant did not oppose consideration of the reply. This was taken as a refusal to stipulate to consideration of the reply. Nevertheless, Plaintiff submits and requests that no hearing is necessary for resolution of this motion, as is usual in Social Security litigation.

RESPECTFULLY SUBMITTED on this 22nd day of January, 2006.

/s/ _____
James Hunt Miller, Attorney for Ms. Frazier

ORDER.

PURSUANT TO PLAINTIFF'S MOTION, IT IS ORDERED that Plaintiff's late-filed Reply will be considered.

DATED: 1/24/06 _____

